

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Gary Smith,)	
Plaintiff,)	
vs.)	Case No.:
)	
Rausch, Sturm, Israel, Enerson & Hornik,)	COMPLAINT
LLC,)	AND DEMAND
And)	FOR JURY TRIAL
Equable Ascent Financial, LLC.,)	
)	
Defendants)	

COMES NOW the Plaintiff, by and through his attorneys Pamela A. Car and William L. Reinbrecht of Car & Reinbrecht, P.C., L.L.O., and alleges and states that this is an action brought by an individual consumer for Defendants' violations of the FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C. §1692 et seq. (hereinafter referred to as the "FDCPA") and related state law claims. In support of their claims, the Plaintiff states and alleges as follows:

JURISDICTION AND PARTIES

1. That subject matter jurisdiction of this Court arises under 15 U.S.C. §1692k, actionable through 28 U.S.C. §1331 and other provisions of the law.
2. That venue is proper in this Court for the reason that the Plaintiff's claims occurred in this Judicial District.
3. That Plaintiff is a resident of Omaha, Douglas County, Nebraska.
4. That Defendant Equable Ascent Financial, LLC (hereinafter referred to as "Equable") is a debt collector and a corporation doing the business of collecting debts in this state.

5. That Defendant Rausch, Sturm, Israel, Enerson & Hornik, LLC (hereinafter referred to as “RSIEN”) is a debt collector and a corporation doing the business of collecting debts in this state.

6. Defendants are all entities who contributed to or participated in, or authorized, and/or implemented the policies regarding the acts complained of or conspired with the named Defendants to commit the acts complained of which caused injuries to the Plaintiff. Each Defendant acted as principal and agent, each of the other, and combined and concurred each with the others in committing the challenged acts.

7. Plaintiff alleges that at all times relevant herein, each of the Defendants were, and are now, the agent, servant, employee, and or/other representative of the other Defendants, and in doing the things herein alleged, were acting within the scope, purpose and authority of such agency, service, employment and/or other representative capacity with the permission, knowledge, consent and ratification of the other Defendants. Any reference hereinafter to “Defendants”, without further qualification, is meant by Plaintiff to refer to each Defendant named above.

FACTUAL BACKGROUND

8. That at all times relevant hereto, Defendants were attempting to collect a debt alleged to be owed by the Plaintiff for personal, family, or household purposes, which originated with WAMU, then purportedly was assigned to CHASE and then to Defendants.

9. Defendants sent a collection letter dated September 9, 2011 to Mr. Smith, the purpose of which was to attempt to collect said debt of Chase (WAMU). Attached hereto as Exhibit “A” and incorporated herein by this reference is a copy of said September 9, 2011 letter.

10. On or about October 21, 2011, Defendants filed a collection lawsuit in the county court of Douglas County, Nebraska, in a matter entitled, “*Equable Ascent Financial, LLC v. Gary Smith*,” at case no. CI11-20088. Attached hereto as Exhibit “B” and incorporated herein by this reference is a copy of said Collection Complaint. The summons filed with the Complaint gave Mr. Smith 30 days from the date of service to respond to the Complaint.

11. On or about November 7, 2011, less than the 30 days allowed for responding to the lawsuit, Mr. Smith was sent another letter from Defendants, the purpose was to collect the very debt. No mention was made of the pending lawsuit. Said letter gave Mr. Smith until November 28, 2011 to respond. Attached hereto as Exhibit “C” and incorporated herein by this reference is a copy of said November 7, 2011 letter.

12. Mr. Smith filed an Answer and General Denial to the County court collection case and that case remains pending.

13. Despite the pending collection lawsuit, Defendants sent Mr. Smith yet another collection letter dated December 2, 2011, again to collect on the same alleged debt. Attached hereto as Exhibit D and incorporated herein by this reference is a copy of said letter.

14. During the entire time, Mr. Smith also received frequent automated and live calls regarding this account even after he was sued to collect the identical alleged debt. Mr. Smith personally advised the Defendants that they already sued him to collect on said debt and he disputed the debt. Nonetheless, the collection calls, letters and automated calls continue.

15. Mr. Smith also continues to receive collection letters while the lawsuit is pending.

16. All of the collection letters have an unsigned signature block which reads:

Yours truly,

Rausch, Sturm, Israel, Enerson & Hornick, LLC

thereby falsely representing or implying that a communication is from an attorney in violation of 15 U.S.C. §1692e(3), and (2) using any false representation or deceptive means to collect or attempt to collect any debt in violation of 15 U.S.C. §1692e and e(10).

CAUSE OF ACTION NO. 1.
FAIR DEBT COLLECTION PRACTICES ACT

The Plaintiff for his Cause of Action against the Defendants, states and alleges as follows:

17. That the Plaintiff is natural persons and a “consumer” within the meaning of the Fair Debt Collection Practices Act, 15 U.S.C. §1692a(3).
18. Defendants are engaged in the business of collecting debts and regularly attempt to collect debts alleged to be due another by use of the mail and telephone and as such, are “debt collectors” within the meaning of 15 U.S.C. §1692a(6).
19. That at all times relevant hereto the Defendants were attempting to collect an alleged debt alleged to be in default and owed by the Plaintiffs concerning bills for personal, family or household purposes.
20. That during the course of attempting to collect the alleged debts, Defendants:
 - a) sent letters in the form of Exhibit A, C, and D which violate 15 U.S.C. §§1692e, 1692e(3), and 1692e(10) of the FDCPA as well as the NCPA,
 - b) used false representation or deceptive means to collect or attempt to collect any debt in violation of 15 U.S.C. §1692e and e(10) and (b) falsely represented or implied that a communication is from an attorney in violation of 15 U.S.C. §1692e(3) and
 - c) misrepresented the legal status of the debt in violation of 15 U.S.C. §1692e,
 - d) continued to make phone calls and send letters to Plaintiff after he disputed the debt without proper validation,
 - e) attempted to collect charges in its county court lawsuit that are not authorized.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants for statutory damages, actual damages, and statutory attorneys' fees and costs of this suit and for such other and further relief as the Court shall deem appropriate.

CAUSE OF ACTION NO. 2
NEBRASKA CONSUMER PROTECTION ACT

21. Plaintiff repeats and incorporate the foregoing allegations contained above as if fully set forth herein.

22. That the FDCPA violations set forth above also constitute violations of the Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59-1609 et seq. and entitles Plaintiff to statutory and actual damages, injunctive relief and attorney fees and costs against both Defendants. That this case is within the public interest.

WHEREFORE, Plaintiffs request judgment be entered in their favor against both Defendants, as follows:

- A. Awarding statutory damages pursuant to Neb. Rev. Stat. § 59-1609;
- B. Awarding actual damages;
- C. Awarding injunctive relief to prevent further violations;
- D. Awarding costs and reasonable attorney fees pursuant to Neb. Rev. Stat. § 59-1609 et seq.; and
- E. Enter such additional relief as the Court may find to be just and proper.

Dated: January 24, 2012

Gary Smith, Plaintiff,

By: /s/ Pamela A. Car

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JURY DEMAND

Plaintiff demands a trial by jury as to all issues so triable in Omaha, NE.

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